CANCELLED CANCELLED

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.NO. 115 / 2004

Appellant (Claimant) : Kishore Chand Ramlo S/o Late Govind Ramlo, aged about 28 years, R/o Sector 4, Bhilai, Dist : Durg-(C.G.)

Versus

Respondents (Non-Applicants) :

1. Smt. Jaspal Kaur W/o Gurvinder Singh alias Raja, R/o Near Gardar Bridge, Dallirajara, Dist : Durg-(C.G.)
2. The National Insurance Company Ltd., Gurunanak Chowk, Jagdalpur
3. The Bajaj Aliens General Insurance Co.Ltd., Through M/s Vandana Auto Vandana House, G.E.Road, Raipur-(C.G.)

P. R. No. 2957/04 Presented by Shri Pareshwar Singh Dated 23/10/04

MISC. APPEAL U/S 173 OF THE MOTOR VEHICLES ACT.

Claim in Appeal : Rs.25,000.00
Fees Court fees paid : Rs. 15.00

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 115 OF 2004

Kishore Chand Ramlo

-Versus-

Smt. Jaspal Kaur and other

J U D G M E N T

Post for 14-2-2005

Sd/-
Fakhruddin
Acting Chief Justice

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 115 OF 2004

Kishore Chand Ramlo

-Versus-

Smt. Jaspal Kaur and others

Appellant by Shri Prafull Bharat, Advocate.

Respondent No. 2 by Shri Anand Gupta, Advocate.

Respondent no. 3 by Shri S.S. Rajput, Advocate

J U D G M E N T

Heard finally, with consent.

2. This appeal has been filed against the order dated 30-12-2003 passed by the Motor Accident Claims Tribunal, Jagdalpur whereby the application for interim compensation filed by the appellant has been rejected.

3. Brief facts of the case are that the appellant filed a claim petition along with an application under Section 140 of Motor Vehicles Act for grant of interim compensation stating that the accident occurred on 8-11-2002 at about 10.00 P.M. It was stated that while the appellant along with his friend Jaiprakash was going from Bhilai to Jagdalpur on a motorcycle of his brother bearing registration No. CG 04 ZM 2494 namely Bajaj Boxer, and when he reached near Asna Dhaba, a truck bearing registration No. CG 07 ZC 2845 was parked by its driver in the middle of the road without Indicator, Parking light and at the time another vehicle was coming from opposite

side and due to bright light of that vehicle, he could not see the parked truck and collided with the said truck. Due to said accident his Spine Survical got fractured and 15 stiches were sewed in his skull and he also suffered paralysis of entire body just below the chest. Before the Court below it was submitted that the claimant was working in a Tractor Agency as a Sales Officer and was getting Rs. 5,000/- per month. It was further submitted that due to the said accident, he suffered permanent disability and he is unable to work. It was also submitted that in the treatment he has to incur heavy expenses. The claimant claimed Rs. 9,00,000/- in all heads from the respondents.

4. The respondents filed reply and denied the claim of the appellant.

5. The Court below has rejected the application for grant of interim compensation on the ground that since the accident had occurred due to the negligence of appellant, he is not entitled for any interim compensation.

6. Learned counsel for the appellant submitted that the Tribunal has failed to consider that the only requirement while considering the application under Section 140 of Motor Vehicles Act is that an accident was occurred out of the use of motor vehicle and at the stage of grant of interim compensation, the claimant is not required to plead and establish the fact that the death or permanent disablement was due to any wrongful act, negligence or default of the owner.

7. Counsel for the appellant placed reliance on a decision in the case of Shamina Begum and others –v- Rajendra Waghmare and another (1999(2) JLJ 231) where while dealing with section 140 of Motor Vehicles Act, it was held in para 7 that for awarding compensation under Section 140 of the Act, the Tribunal is required to satisfy itself whether an accident has arisen out of the use of motor vehicle.

8. Counsel for the appellant placed reliance on the decision of this Court in the case of Harbans Singh Tuteja –v- Vinod Niarmalkar and another (2002(2) CJLJ 331). Para 5 of the judgment is relevant and quoted below:-

> *"5. Learned counsel for the applicant in support of his contention placed reliance on a judgment of Supreme Court reported in the case of Shivaji Dayanu Patil and another –v- Vatschala Uttam More (AIR 1991 SC 1769) where the Apex Court while interpreting the scope of Section 92-A of the Motor Vehicles Act, 1939 (corresponding to Section 140 of the Act) quoted with approval the law enunciated by it in an earlier decision in case of Gujrat State Road Transport Corporation –v- Ramanbhai Prabhatbhai (AIR 1987 SC 1690) observed in paras 11 and 12 as under :-*
>
> *'11. ... ...*
>
> *It is thus seen that to a limited extent relief has been granted under Section 92-A of the Act to the legal representatives of the victims who have died on account of motor vehicles accidents. Now they can claim Rs. 15,000/- without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicle accident. To that extent the substantive law of the country stands modified.*

12. It is thus evident that Section 92A in the nature of beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the Courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose. The same approach has been adopted by this Court while construing the provisions of the Act. (See Motor Owners' Insurance Co. Ltd. –v- Judavji Keshavji Modi (1981 ACJ 507 (SC) and Skandia Insurance Co. Ltd. –v- Kikilaben Chandravadan (1987 ACJ 411 (SC).'

In Shivaji Davanu Patil (Supra), the Supreme Court has enunciated the principles of law that no fault provision, as is propounded in section 92 – A of the Act of 1939, correspondent to section 140 of the Act, is in the nature as of a measure of social justice a beneficial legislation enacted with a view to confer the benefit of expeditious statutory payment of fixed amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. The underlying object of the provision would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition under section 110A of the Act of 1939 corresponding section 166 of the Act, but before ordering compensation under this provision the Tribunal has to satisfy itself that the requirement of section are satisfied."

9. Counsel for the appellant further relied on the decision in the case of K. Nandakumar –v- Managing Director, Thanthal Periyar Transport Corporation (AIR 1996 SC 1217). Para 4 of the judgment is relevant and quoted below:-

"4. There was, therefore, on a plain reading or Section 92-A, particularly the first part of sub-section (4) thereof, no basis for holding that a

claim thereunder could be made only if the person who had died or suffered permanent disablement had not been negligent.' The provision being clear, no external aid to its construction such as the Statement of Objects and reasons, was called for."

10. In view of the provisions contained under Section 140 of the Act and the judgments cited and discussed herein above, in the opinion of this Court, the Court below was not justified in rejecting the application for interim compensation filed by the appellant. Accordingly, the impugned order is not sustainable and the same is set aside. The appellant is entitled for interim compensation of Rs. 25,000/- and respondents No. 1 and 2 are directed to pay the amount of interim award jointly within a period of 30 days. It is made clear that if the amount is not paid within the stipulated period, it shall carry interest @ 9%.

11. With the aforesaid observations and directions the appeal is allowed with costs.

12. Counsel fee as per scale.

Sd/-
Fakhruddin
Acting Chief Justice

14 - 2 -2005

Pathak/-